

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for August 6, 2003**

A meeting of the Environmental Planning and Policy Committee (EPPC) was held on Wednesday, August 6, 2003 at 8:30 a.m. in the Board Room (Room 150) of the Transportation Building located at 1 South Wilmington Street in Raleigh. Marion Cowell chaired the meeting. Other Board of Transportation members that attended were:

Conrad Burrell
Tom Betts
Nancy Dunn
Lanny Wilson

Doug Galyon
Frank Johnson
Alan Thornburg

Other attendees included:

Ron Watson
Berry Jenkins
Pat Ivey
David Hyder
Gail Grimes
C.A. Gardner
Bill Rosser
A.W. Roper
Robin M. Little
Sharon Lipscomb
Don Lee
Phil Harris

Mike Holder
Don Voelker
Sandy Nance
Roy Shelton
Carl Goode
J.G. Nance
Charles Tomlinson
Sarah Mitchell
Cherie Gibson
Rodger Rochelle
John Sullivan
Roger Sheats

Craig Deal
Ken Pace
Moy Biswas
Janet D'Ignazio
Mike Mills
Odessa McGlown
Donnie Brew
Rob Hanson
Fred Lamar
Frank Vick
Allen Pope

1. Call to Order, Introductions, and Approval of Meeting Minutes

Marion Cowell, Vice-Chairman of the Environmental Policy Planning Committee for the upcoming Board year, called the meeting to order at 8:35 a.m. and asked for a motion to approve the minutes. The minutes of the last meeting were approved as presented after Frank Johnson initiated and Marion Cowell endorsed the motion. Mr. Cowell introduced the next segment and turned the meeting over to Roger Sheats and Janet D'Ignazio.

2. Addressing Environmental Issues During the Project Development Process

The next order of business was "Addressing Environmental Issues During the Project Development Process" presented by Janet D'Ignazio, Chief Officer, Office of Planning and the Environment.

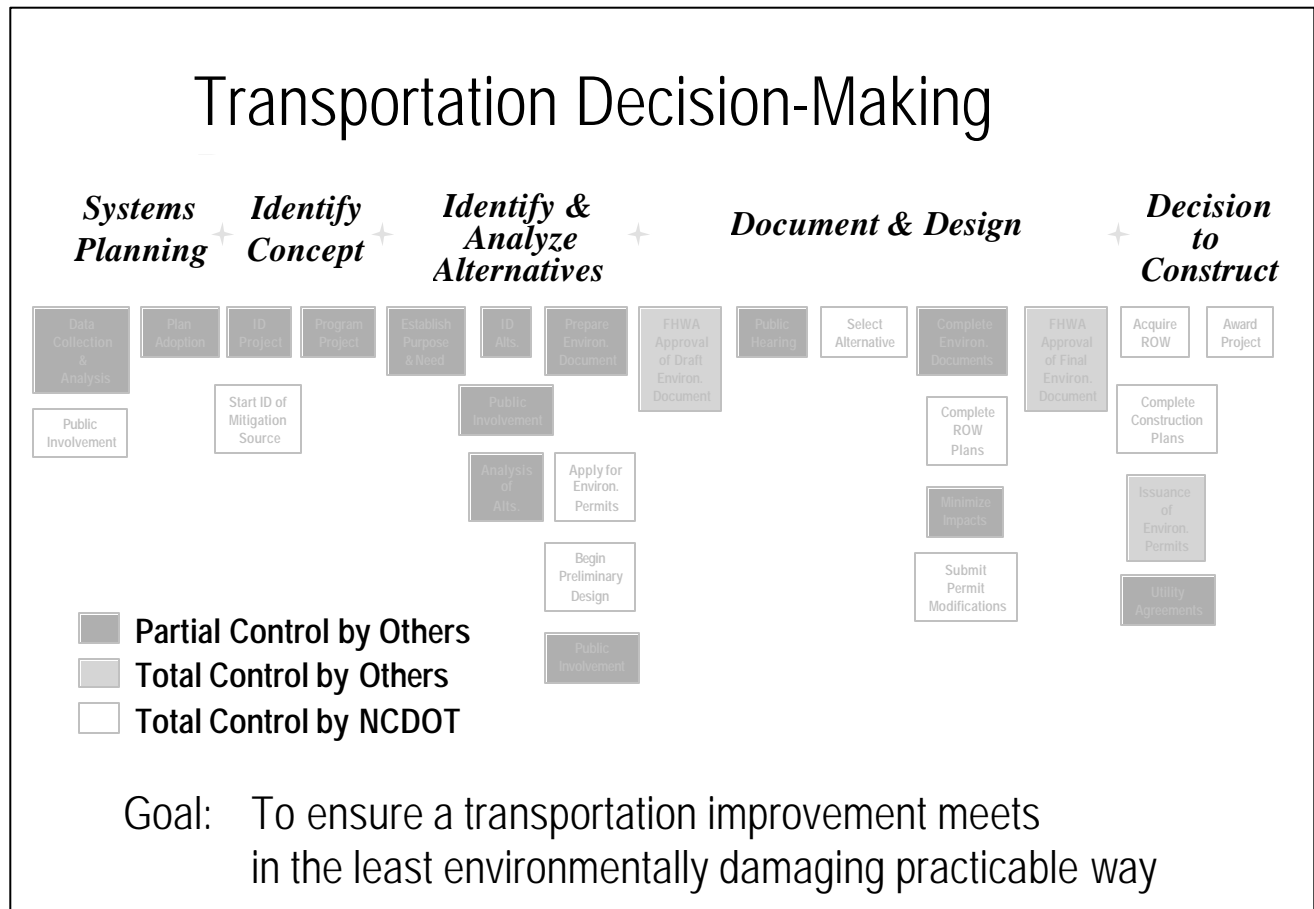
Ms. D'Ignazio opened by stating that there are few issues that are more difficult to understand than why it takes so long to make a transportation improvement once the DOT gets involved. She acknowledged that there is no other process at DOT that is more complex, both technically and legally. Likewise, there is no other process at DOT that is

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for August 6, 2003**

easier to challenge legally, or easier to derail in midstream either through a legal challenge or public controversy. She added that the Department is working hard to improve this process because we believe the project delivery process is much too long and we want to identify ways to delivery projects more efficiently.

The purpose of this presentation was to present a high level view of how the project delivery process works and present some detail of the individual steps involved in the process, the occurrences at each step, the decisions made, and the major laws influencing the decisions. Additionally, she would address the issues the Department is facing at each step of the process, and some of the actions, activities, and changes that are underway that will make the process work better and be less vulnerable to legal or public challenge.

Acknowledging that it is difficult to read, Ms. D'Ignazio started with the following visual. The purpose of showing this chart is not to read the boxes but to observe the colors, which represent the degree of control exercised by many of the processes' stakeholders.



This chart is a big-picture representation of the process that is used for most transportation decisions from long range planning to the decision to award a contract for

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for August 6, 2003**

construction. It represents a fairly complex project that would require an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI). The EIS and EA projects are very similar when considering what must be done to satisfy the regulatory requirements. There are many projects that are not subjected to this complex process, as they may be done using Categorical Exclusions (CE) if their environmental impacts are minimal. Most projects that the EPPC members are concerned about -- the high priority, big projects -- must follow this process. Additionally, any new alignments, major widenings, or any project that has environmental or community sensitive issues will need to go through this process. The time required to get through this process from start to finish, excluding any long-range systems planning activities, is six to twelve years. However, the process may take longer than twelve years if there is excessive controversy.

During this entire process, we are using both qualitative and quantitative technical data to make the best possible decision on an improvement that will address a transportation deficiency. This is a tiered decision-making process. We start at the beginning by taking a long-range look at the deficiencies and potential solutions, and by the time we get to the end, there is a design and right of way plan that is accurate to within inches. So throughout the process, we are looking at the same questions, issues, and data but at differing levels of detail.

Everyone is a decision-maker in this process. The aforementioned chart is color coded to show who is in control of the steps of the process. The boxes that indicate DOT's total control are the more technically driven steps—the engineering, data collection, and development of documentation to be submitted. Then, there are steps in the process that are shared with other agencies or with local government (i.e., MPO, resource agency). Finally, there are three boxes, color-coded light gray over which the DOT has absolutely no control. Two of the steps, the draft EIS and the final EIS, are controlled by FHWA. Because USDOT and NCDOT, both transportation agencies, have a common mission and vision of where we are going and what we want to do, NCDOT can usually get approvals from USDOT with relatively little difficulty if we follow the process, adhere to procedures, and provide documentation and rationale for proposals.

The most important box on the chart is the one that says “Environmental Permits”. The important aspect of “Environmental Permits” is its positioning on the chart and its context within a process that can take more than twelve years. The actual issuance of a permit happens within the last twelve months--sometimes within the last two months--before we are ready to go to bid. Obviously we are working on permits by completing permit applications and participating in discussions throughout the entire process. However, the final decision about whether or not we will construct a project lies neither USDOT nor NCDOT; this decision lies primarily with the Army Corps of Engineers and the North Carolina Department of Environment and Natural Resources.

It is important to understand that this is how the decision-making process works, and who the decision-makers are because much of the process changes that you are making are a

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for August 6, 2003**

direct result of the acknowledgement of the fact that this is shared decision-making process. It is an acknowledgement that NCDOT does not *own* this process by itself, and NCDOT is legally unable to make a decision to build a transportation improvement without coordinating, consulting, and working with other agencies whose missions are very different from DOT's.

There are not less than twenty laws and regulations that guide us through the process, but the three major ones are:

- A. At the systems planning and programming level, the decision to include the project in the TIP is governed by TEA-21. This is Federal Reauthorization, which allows us to spend federal money and mandates requirements for how transportation improvement planning will occur in long range and capital improvement situations.
- B. From programming to the point that USDOT approves the environmental documents, the guiding laws are either NEPA (National Environmental Policy Act) or SEPA (State Environmental Policy Act). These two sets of laws are very similar which results in somewhat less flexibility than other states have as their state laws may not be as strict as federal laws.
- C. At the end of the process is permitting. This activity is controlled by the Federal Clean Water Act, State Clean Waters laws and regulations, Federal Endangered Species Act, and many other environmental laws developed to protect various natural resources and other laws to protect cultural resources, which include historic properties and archaeological sites. All must be taken into consideration before a permit can be issued.

Avoidance and minimization, and mitigation are important concepts to consider when discussing permitting laws. These laws require us to avoid protected resources—natural and cultural, and when avoidance is not possible, we are required to minimize the impact on the protected resource. Before we can consider mitigation, we must show the resource agencies that we have done everything possible to avoid and minimize. It is important to introduce this concept during the permitting discussion to emphasize the fact that our process for meeting this requirement starts at systems planning with our effective documentation to support our avoidance and minimization efforts.

The Merger process is the final concept derived from this visual that merits discussion. As mentioned earlier, the questions that are asked and decisions made under NEPA and SEPA are almost identical. Under the old way of doing business, prior to the time that we started the Merger process, NCDOT would make all the decisions, employing NEPA/SEPA mandates. NCDOT would then apply for the permit, only to have the resource agencies question the project's purpose, NCDOT's choice of alternatives, or perceived lack of adequate avoidance or minimization. This initiated a rework loop that demanded a large number of man-hours to correct, and in the permitting process this

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for August 6, 2003**

occurs a few months prior to let. To alleviate rework, the decision making for NEPA/SEPA and permitting was merged. Under the Merger process, the agencies come together at concurrence point meetings to agree on decisions that meet the requirements of both NEPA/SEPA and permitting simultaneously. Now, on a Merger project, we will not get to the end of the project and have an agency question whether or not NCDOT has adequately met the requirements of their permitting laws. This is probably the largest step that we have taken to make this process more efficient and more effective.

There are two pillars in the tiered decision making process. First, decisions need to be consistent at levels. It is imperative that we are internally and externally consistent in terms of support, data analysis, and project activities. It is important that the local project initiators remain true to the project, because any major deviation, i.e., a suggestion to solve the problem using transit, will send the project back to the systems planning phase. Secondly, we must do the right things, do them well, and we must document to show how activities are being carried forward throughout.

The five major high-level steps in the process are Systems Planning, Identification of Concepts, Identification and Analysis of Alternatives, Documentation and Design, and Decision to Construct.

- ❑ Systems Planning is known as the long-range planning process. This is the 25-year plan that looks at the whole system—all roads, all transportation deficiencies, all modes—using land use information, environmental information, socioeconomic projections, economic development plans, and the community's values and goals to determine transportation's role in meeting transportation needs. The local government primarily controls this process, and NCDOT provides technical assistance to support the process. By law, this process is owned, in the urban areas, by metropolitan planning organizations. Federal law says that MPO's are 100% responsible for producing their long-range plans; however, because of joint interest in roads located in urban areas, NCDOT does coordinate with them. Nonetheless, the decision-makers at this point in the process are the local elected officials when they adopt their transportation plans. The laws that govern this step are the USDOT planning laws.

As we look at transportation problems, we need to be cognizant of the environmental resources in the area and take appropriate steps to avoid them. This is where issues regarding indirect and cumulative impacts surface. All agencies are incredibly concerned for various reasons. NCDOT is concerned with the direct impact to a wetland by a road project, and must therefore deal with those impacts. In addition to this concern, the agencies are concerned with development that could occur as a result of a road project and the impacts to protected resources that result from the development. For example, Durham made a decision about ten or fifteen years ago to place an RTP-type development in the middle of a critical watershed. They are now in the

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for August 6, 2003**

process of trying to sell this development to businesses that are moving to North Carolina as an alternative to Research Triangle Park, but transportation access into this facility is inadequate. The roads are primarily two-lane secondary roads that will require widening. Although necessary, it would be quite difficult for NCDOT to establish a purpose and need sufficient enough to justify significant impacts to core protected land and critical watersheds. This is an example illustrates the need for local government to be cognizant of the land use decisions they make in their long-range plans. This is a problem that the Department simply cannot address for them.

- ❑ After the Systems Planning phase is complete and a long rang plan has been adopted, the local area and NCDOT collaborate to identity the most important deficiency on the long-range plan, develop a plan to address it, and discuss available funding. In the Identify Concept step, the highest priority deficiency is identified, and the scope is defined. The project's scope gives the best possible picture of the issues that will be faced so that the most reasonable cost estimate and schedule can be developed. In order to get the best information, some environmental screening, public involvement, engineering analysis, and TIP programming must occur. The local MPO policy board and the NCDOT Board share decisions at this step. The federal law provides for a mutual veto by the decision makers, i.e., if either body disagrees with the project that is being placed in the TIP, either may veto that portion of the TIP. When the veto is introduced, the process stops completely and no projects for that urban area are included in the TIP. In the rural areas, NCDOT makes the decision and the Board approves the projects to include in the TIP. NCDOT meets the requirement to consult local government officials by working with the RPO's.
- ❑ After the project is funded and placed in the TIP, and the cost and schedule are projected, the environmental review process can begin. The first step in the process is to identify the alternatives that will be considered. Both NEPA and SEPA require the evaluation of, at a minimum, a build and a no build scenario, but it is rare to only consider these. The critical issue with which to contend is the number if alternatives to consider, because all must be studied to the same level of analysis. This is probably the longest step in the process because the activities that must occur are very time-consuming. This is the phase that exemplifies the major joint decision making process that must occur.

Frank Johnson inquired about the interjection of commonsensical evaluation of the alternatives and used Blowing Rock as an example. Ms. D'Ignazio reminded him that cost is not a consideration under NEPA, that is, unless the decision-makers agree early not to consider a specific alternative for that reason. Ms. D'Ignazio further explained that NEPA is a procedural law—not the answer, which is subject to legal challenge, that must be derived as a result

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for August 6, 2003**

of the process. Any answer could result as long as it is justified. The courts will not evaluate the answer as right or wrong, but will evaluate the process to ensure the steps were followed properly, the decisions were made using sound data, the decisions were logical, public involvement was adequate, and the legal standards that are in the NEPA law were met. The purpose of the document that is produced is to disclose to all interested parties the consequences of building the project. Two additional aspects of NEPA are: (1) anyone can challenge the process, and (2) the window of opportunity to challenge is six years after FHWA makes a final decision. Hence, there are many legal risks and vulnerabilities to NEPA and SEPA that the Department must manage. Much of the process is risk management and accurate documentation, so that if the decision is challenged, the Department can show the court through the administrative record that the decisions made were logical.

The product from this step is a draft Environmental Impact Statement or draft Environmental Assessment. As progress is made within the process, the level of detail or focus increases as more data is gathered, understanding that much data is time sensitive, season sensitive, and/or weather dependent. At this step, one can start to define the corridor views of the road and focus on greater avoidance and minimization. Within this set of steps are two merger steps: (1) agreement with all parties on purpose and need, and (2) agreement on the selection of alternatives that will be studied. Formally, those decisions are made by USDOT- FHWA, NCDOT, NCDENR, and USACOE. Both NCDENR and USACOE coordinate their sign off with the other resource agencies, such as US Fish and Wildlife Service, Environmental Protection Agency, NC Wildlife Resources Commission, the US Coast Guard, and any other agency that may have an interest in the permit being issued. This is the point in NEPA where the Department is most vulnerable. Our responsibility is to ensure we are managing the process correctly and documenting accurately so that we can legally defend our decisions.

- The Document and Design step involves the selection of a locally preferred alternative, which is not necessarily the selected alternative (the least environmentally damaging practicable alternative). Before the final alternative is selected, additional public involvement and analysis must occur. The decision-makers are USDOT- FHWA, NCDOT, NCDENR, and USACOE (with coordination from other agencies). At this step, detailed designs may start. The laws that govern this step are NEPA with permitting laws overlaid through the merger process. The major issue at this step is the permit.

Ms. D'Ignazio then reviewed the issues at each step and the activities that are done to alleviate or minimize the impact of the issues. The slides are self-explanatory.

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for August 6, 2003**

Statewide Planning

Key Issues

- Good data
 - land use
 - socioeconomic
 - environment
- Understanding local needs and community values
- Development of viable, “buildable” transportation plans
- Air Quality

What We’re Doing

- Enhanced GIS
- Increased public involvement
- Avoidance and minimization of high quality resources
- Statewide Long-Range Plan
- “Transportation” plans
- Linkages to land use
- AQ Roundtable
- EAC

Identification of Concepts

Key Issues

- Purpose and need
- Early identification of environmental issues
 - Local needs and community values
 - natural environment

What We’re Doing

- Pre-TIP Process
 - purpose and need
 - environmental issues
 - narrow range alternatives
- Integrated transportation plan as input to project scoping
- Increased public involvement
- Merger Proces
- Early, programmatic mitigation (EEP)
- GIS enhancement

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for August 6, 2003**

Identify and Analyze Alternatives

Key Issues

- Purpose and need
- # of alternatives to study
- ID of resources and assessment of impacts (includes A & M)
 - ICI
 - Protected species
 - Historic resources
 - Community impacts
 - Habitat connectivity
- Competing resource considerations

What We're Doing

- Involvement of agencies, MPO's and RPO's (Merger Process)
- Increased public involvement
- Elimination of some alternatives
- ICI Guidance and Training
- Predicative Archaeological Modeling
- Community Impact Assessment
- Permit Process Improvement
- Programmatic Agreements
- Enhanced GIS
- EEP

Document and Design

Key Issues

- Permit application development and review (internal and external)
- Public involvement
- Decision on LEDPA by FHWA with concurrence from resource agencies and local officials
- Indirect and cumulative impacts associated with 401 Certification

What We're Doing

- Increased public involvement
- Context sensitive design
- Improved permitting process
 - clear permit expectations
 - increased avoidance and minimization
 - early and continuous coordination with agencies
- Indirect and cumulative impact assessment for permitting
- Enhanced GIS
- EEP

Decision to Construct

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for August 6, 2003**

Key Issues

- Late re-work
- Clear expectations about environmental commitments
- Permit decisions

What We're Doing

- Permit Process Improvement
- Earlier utility coordination
- Permit decisions off critical path
- Improvement in process for reviewing, incorporating and communicating environmental commitments
- Project Delivery Meetings

Ms. D'Ignazio summarized the presentation by stating that this is a multi-agency, partnered process with joint decision-making requirements in which no one entity gets all that it desires. Because it is a multi-agency, partnered process, it must be built around partnering principles and basic trust. The Department managers at the staff and senior management levels speak often about building partnerships and trust. Building partnerships and trust are not only the right things to do, but these activities help ensure this process works better. This is a tiered decision making process, where maintaining consistency of purpose and decision making is critical. This is a legally vulnerable process, so doing things correctly and documenting accurately are important in ensuring the process is smooth and efficient.

The following are actions the Board can do to assist with this process:

- Partner with project teams to gather information early so that issues can be resolved before they become show-stoppers,
- Coordinate with local elected officials and the public at large to communicate the need and importance of projects, the steps involved, and the data collection that must occur to maintain the constancy of purpose,
- Understand the issues and offer assistance to resolve the issues, and
- Assist with risk analysis in order to expedite the process.

Deputy Secretary Roger Sheats accepted a question from Mr. Frank Johnson regarding linearity of the process and the number of steps required to complete the process. Mr. Johnson suggested that an alternative was to incorporate three distinct parallel processes that occur around the concurrence points. Additionally, he felt the effective use of available technologies would make the process more efficient and provide adequate tracking of a project's status. Mr. Sheats commented by explaining the difficulties of displaying a multi-dimensional process in a single dimension and ensuring him that the Department is constantly working to improve the process. He further stated that it is important that some steps remain linear while others occur concurrently. The Department has made great strides to improve the organizational relationships between the various departments and technical capacity within the Department, and has in effect, shortened this very complicated process by 2 ½ years over the last two years. Ms.

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for August 6, 2003**

D'Ignazio reiterated the improvements that resulted from the development of the Merger process and the EEP. She further assured the committee that the list of activities listed in the presentation is not all-inclusive.

Mr. Tom Betts inquired about North Carolina's effectiveness when compared to the other 48 contiguous states and our adoption of best practices from those states. Mr. Sheats responded that we are leading thinkers on Indirect and Cumulative Impact issues, a national leader in the effort to increase public involvement, a leader in decentralizing the planning for RPO's and MPO's, and a trailblazer as far as the EEP is concerned. North Carolina has taken some of the hardest looks at these issues and taken some of the most aggressive steps to improve our transportation conditions.

Mr. Lanny Wilson clarified the previous question by asking about the average project delivery time in other states when compared to North Carolina. Mr. Sheats responded that the southeastern region is one of the most regulated in the country and North Carolina is possibly the most regulated within the Southeast. He projected that this intense regulation has resulted in forced creativity and innovation in this state. Because others are not dealing with the same issues as North Carolina, it is difficult to compare. North Carolina has one of the largest new construction projects in the country, is doing more Environmental Impact Statements, and has more mitigation on one project in Wilmington than the entire state of Pennsylvania has in its entire program. Because North Carolina is a high growth state, we need new roads. By choosing roads, we have chosen the more complex way to make transportation improvements. Hence, we must follow this process.

Currently, North Carolina has 40 –50 Environmental Impact Statements underway; South Carolina has two. This is indicative of the difference in the types of programs and the complexity of the programs with which North Carolina is dealing. Mr. Marvin Blount inquired about the location of the programs. The response was Asheville, Currituck, and Wilmington --and evenly distributed all over the state. Mr. Blount continued by asking if there has been an increase in the amount of time required to get a project to let. Mr. Sheats responded by stating that there was an increase in regulatory activities around 1996 and 1997 that caused productivity to be reduced, which is also the reason for the significant policy shifts and direction that occurred during that time.

3. Comments and Wrap-up

Mr. Cowell thanked the presenters for an informative and interesting program, and requested they return with more information at a later date. The meeting adjourned at 9:50 a.m.

The next meeting is scheduled for Wednesday, September 10, 2003 at 8:30 in Room 150 (Board Room) of the Transportation Building in Raleigh.

MC/ohm